

OMNI-X USA, INC.

General Terms & Conditions for Sales Contracts



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1. PAYMENT, TAXES: If, following the date of the Sales Order Acknowledgment, the creditworthiness or financial responsibility of Buyer becomes or appears, in Seller's sole judgment, to have become impaired or unsatisfactory to Seller, Buyer shall, upon demand by Seller, provide Seller with adequate assurance of Buyer's due payment of the full Contract price in form and substance satisfactory to Seller. If Buyer fails to comply with such demand of Seller, such failure may be considered to constitute a repudiation of this Contract by Buyer with respect to Buyer's performance not yet due, and Seller shall be entitled to the remedies set forth in Article (7) hereof, in addition to any other remedies available to Seller at law, by statute, in equity or otherwise. Unless otherwise expressly stated on the face of the Sales Order Acknowledgment, the prices quoted herein do not include any sales, use, excise, ad valorem, receipts or like taxes, import duties, or any other duties or charges whatsoever currently or hereafter imposed by any governmental authority, and all such taxes, duties and other charges shall be borne by Buyer. Buyer shall pay the price specified on the face of the Sales Order Acknowledgment without set-off, counterclaim, recoupment or other similar rights which Buyer may have against Seller, which rights shall be exercised in separate proceedings between Buyer and Seller. Any new, additional or increased freight rates, surcharges (bunker, currency, congestion or other surcharges), taxes, customs duties, export or import surcharges or other governmental charges, or insurance premiums, which may be incurred by Seller with respect to the Goods after the conclusion of the Sales Order shall be for the account of Buyer and shall be reimbursed to Seller by Buyer on demand. If Buyer fails to pay for the Goods in accordance with the Sales Order Acknowledgment, Buyer shall pay to Seller as liquidated damages and not as a penalty overdue interest at the rate of the lower of eighteen percent (18%) per annum or the maximum interest rate permitted by the applicable laws, calculated from the due date for such payment until the actual date of payment calculated on the 360 days a year basis for the actual number of days elapsed.

2. DELIVERY AND TITLE: Products provided by Seller are FOB Origin. Unless otherwise expressly provided for on the face of the Sales Order Acknowledgment, Seller's delivery of Goods to a carrier shall constitute due delivery of such Goods to Buyer. Upon such delivery, title to and risk of loss of the Goods shall pass to Buyer, subject to Seller's right of stoppage in transit or otherwise. In the event Buyer fails to nominate its carrier, Seller may, at its sole discretion and for Buyer's risk and account, arrange for the transportation of the Goods to the Buyer's place of business, without prejudice and in addition to any other rights and remedies Seller may have under the Sales Order or at law, in equity, by statute or otherwise.

3. INSPECTION AND ACCEPTANCE: Upon arrival of any Goods at the place to which such Goods shall have been shipped hereunder by Seller at the place mutually agreed upon between the parties, Buyer shall immediately inspect such Goods at its own cost, and if Buyer finds that such Goods do not conform to the description of the Sales Order Acknowledgment or any other terms and conditions hereof, Buyer shall, within five (5) days after the arrival of Goods, give Seller a written notice specifying the details of the nonconformity. A failure of Buyer to give such notice to Seller within such period shall constitute an irrevocable acceptance of Goods by Buyer. Seller shall have the right, following any rightful rejection, either to substitute conforming Goods, or repair the same within a reasonable period of time after Seller's receipt of the aforesaid notice from Buyer.

4. WARRANTY: (a) Seller warrants that the bend tooling provided is guaranteed to produce the parts they were designed to make based on the information provided to define the application. Seller stands behind the products we provide and will work with customers to resolve issues that may arise. Seller's tooling has been designed to maintain normal industry bend tolerances. These tolerances may degrade over time depending on machinery, materials, and production volume. (b) Buyer shall, in claiming a breach of Seller's warranty, submit to Seller a written notice of claim containing full particulars of the claim and accompanied by reasonably adequate proof, within one (1) year from the date of delivery of such Goods. Unless such notice is given within the said one (1) year period, Buyer shall be deemed to have waived all claims. (c) If the Goods fail to meet Seller's warranty, Seller shall, at its option, repair or replace such Goods. This is the exclusive remedy of Buyer for any claim that the Goods fail to meet the Seller's warranty. (d) Buyer shall assume all risks and liabilities resulting from any use, process, consumption, resale or other disposition of the Goods delivered under the Sales Order.

5. INTELLECTUAL PROPERTY: Seller makes no representation or warranty that the sale, use or other disposition of Goods will not infringe on any patent, trademark, design, copyright or other intellectual property right (each an "Intellectual Property Right") of any third party in the United States or any other country. Seller hereby disclaims all liability for any loss, damages, penalty, claim, suit, action, cost and expense (including, without limitation, attorney's fees and disbursements) based on, arising out of or otherwise in respect of any actual or alleged infringement of any Intellectual Property Right of any third party resulting from the sale, use or other disposition of Goods or the performance of Services. In the event that any claim or dispute arises in connection with any allegation that the sale, use or other disposition of Goods or the performance of Services infringes upon any Intellectual Property Right of any third party, Seller reserves the right to terminate the Sales Order in whole or in part and shall have no liability for any loss, damages, cost and expense based upon, arising out of or otherwise in respect of such termination.

6. LIMITATIONS OF LIABILITY: IN NO EVENT, WHETHER, AS A RESULT OF A BREACH OF SALES ORDER OR WARRANTY, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFIT, REVENUE OR CONTRACT, LOSS OF USE, COST OF DOWNTIME, COST OF SUBSTITUTE GOODS OR SERVICES), OR FOR ANY CLAIMS MADE BY BUYER'S CUSTOMERS OR ANY OTHER PERSON FOR SUCH DAMAGES. ALL CLAIMS FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES WHICH MAY BE RECOVERABLE BY BUYER AT LAW, IN EQUITY, BY STATUTE OR OTHERWISE, ARE HEREBY EXPRESSLY WAIVED BY BUYER. ANY OF SELLER'S LIABILITY SHALL BE LIMITED TO THE ACTUAL PURCHASE PRICE PAID BY BUYER FOR GOODS ON WHICH SUCH CLAIM IS MADE.

7. DEFAULT: If Buyer fails to carry out any of the terms and conditions of the Sales Order or of any other contract with Seller, or becomes insolvent, or if a proceeding is instituted or commenced by or against Buyer under any bankruptcy, insolvency or similar law, or if a receiver, trustee or liquidator is appointed for Buyer or any of its assets, or Buyer executes an assignment for the benefit of creditors, Seller may, at its sole discretion, (i) terminate the Sales Order or any part thereof, (ii) declare all obligations of Buyer immediately due and payable, (iii) resell the Goods, (iv) hold the Goods for Buyer's account and risk, (v) postpone the delivery of Goods and/or (vi) stop the Goods in transit, without prejudice and in addition to any other rights or remedies available for Seller under the Sales Order or at law, by statute or in equity. Buyer shall reimburse Seller for all losses or damages arising directly or indirectly from such events of default.

8. REMEDIES: The remedies herein reserved to Seller shall be cumulative and in addition to any other or further remedies provided at law, by statute or in equity.

9. APPLICABLE LAW AND SUBMISSION TO JURISDICTION: The Sales Order shall be governed by the laws of the State of Colorado, without regard to the conflicts of laws principles thereof. Buyer hereby irrevocably consents to the jurisdiction of the Federal and Colorado State courts located in the City of Englewood in connection with any and all suits, actions or other proceedings arising out of or in relation to the Sales Order. Buyer specifically waives any right to a jury trial.

10. CONFIDENTIALITY: Buyer shall not use any proprietary information received from Seller hereunder (other than such information as is known to Buyer or in public domain without the fault of Buyer) for any purpose other than the performance of the Sales Order, and shall not disclose the same to any third party.

11. ENTIRE AGREEMENT / MODIFICATION ASSIGNMENT / WAIVER: The Sales Order Acknowledgment constitutes the entire agreement between Buyer and Seller in respect of the subject matter hereof and supersedes all prior agreements whether written or oral, with respect thereto. Any alterations or modifications hereof shall be by mutual agreement of the parties and shall not be binding on Seller unless agreed to by Seller in writing. Buyer shall neither assign any rights nor delegate any duties under the Sales Order without the prior written consent of Seller. No claim or right of Seller arising out of a breach of the Sales Order shall be discharged in whole or in part by waiver or renunciation of such claim or right unless such waiver or renunciation is made by Seller in writing. No delay on the part of Seller in exercising any right hereunder shall operate as a waiver or renunciation thereof, nor preclude any further exercise thereof or the exercise of any other such right.